AJN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2028 OF 2005

Mr. Mahendra Dhariwal ... Petitioner

Vs.

The State of Maharashtra & Ors. ... Respondents

Mr. A.M. Saraogi for the petitioner.

Mr. A.S. Shitole, A.P.P. for the State.

Mr. Prabhanjay R. Dave for respondent 3.

CORAM: SMT. RANJANA DESAI &
ANOOP V. MOHTA, JJ.

DATED: 5TH OCTOBER 2005.

P.C.:-

1. The petitioner claims to be a film producer. Respondent 3 is the film financier. It is the case of respondent 3 that respondent 3 has financed the petitioner an amount of Rs.90 lacs whereas it is the case of the petitioner that only an amount of Rs.20 to Rs.25 lacs is due and payable from the petitioner to respondent

3.

2. It appears that in July, 2005, respondent 3 filed a complaint with the Deputy Superintendent of Police, Economic Offences Wing, Sector 17, UT Chandigarh, stating that his company has advanced an amount of Rs.90 lacs to the firm of the petitioner i.e. M/s. Indian Movies Private Limited for production of films. But, instead of

producing films under the banner of M/s. Indian Movies Private Limited, the petitioner has diverted the funds to M/s. Ever Shine Films Private Limited and M/s. Dhariwal Films Private Limited. Respondent 3 further alleged that the petitioner had issued cheques in lieu of his liability but when the cheques were presented in the bank, they were dishonoured on account of closure of the account. In short, the allegation of respondent 3 is that the petitioner has cheated him.

3. In this writ petition, the petitioner has prayed that the complaint bearing No.3461/PWS dated 21/7/2005 pending before the Deputy Superintendent of Police, Economic Offence Wing, Chandigarh, be quashed or in the alternative the investigation be transferred to any investigating agency within the city of Mumbai.

4. We have heard Mr. Saraogi, the learned counsel appearing for the petitioner. Mr. Saraogi contended that the Chandigarh police have no jurisdiction to investigate the present case. He submitted that the cause of action has not arisen in Chandigarh but respondent 3 has mala fide with oblique motive created the cause of action in Chandigarh so that the Chandigarh police would get jurisdiction to investigate the case. We may note, at this stage, that the entire case rests on a finance agreement dated 19/1/2002. The agreement is annexed by respondent 3 to his affidavit in reply. We have perused the said agreement. Clause 9 of the said

agreement confers jurisdiction on the Chandigarh courts to try any suit or proceeding, civil or criminal, in connection with the interpretation of the clauses of the agreement and in case of any dispute. We, therefore, called upon Mr. Saraogi to address us on this agreement. Mr. Saraogi stated that the complainant approached the petitioner with the Chandigarh police and the Chandigarh police forced the petitioner to sign the agreement. Mr. Saraogi, however, stated that if the agreement is genuine and it is really executed in Chandigarh, the Chandigarh police will have jurisdiction to investigate this case. Mr. Saraogi also stated that the agreement is not a fabricated agreement but its contents are not correct. This stand of the petitioner is contradictory and not convincing. We, prima facie, feel that the petitioner is somehow trying to wriggle out of the agreement.

5. Mr. Saraogi then contended that the petitioner's company is based in Mumbai. Even the office of the complainant is situated in Mumbai. He drew our attention to the affidavit of respondent 3 wherein he has stated that his residence is in Chandigarh but his office is in Mumbai. Mr. Saraogi further contended that the allegation is that the funds were diverted to some other companies, whose offices are in Mumbai. Therefore, even the alleged diversions are in Mumbai. The bank accounts of the petitioner as well as respondent 3 are at Mumbai. He submitted that, therefore, the entire cause of action has arisen in Mumbai and, for the purpose of creating

cause of action in Chandigarh, the cheques were deposited in Chandigarh. The petitioner was forced to sign the finance agreement indicating that it was executed in Chandigarh.

6. We find it difficult to believe the story that the petitioner was forced by the Chandigarh police to sign the agreement at the instance of respondent 3. It is undisputed that apart from this agreement, there is no agreement on record. This fact is admitted by Mr. Saraogi. If this agreement is a fabricated agreement, then we fail to understand as to how reference to the finance agreement is found in the subsequent correspondence. We have on record a voucher dated 30/3/2005 issued by the petitioner which indicates that an amount of Rs.10,000/- was paid by the petitioner to respondent 3. It is stated in the said voucher that "amt. paid towards the loan agreement as per Agreement". We may then refer to yet another voucher dated 30/12/2004 which indicates that Rs.25,000/- were paid to respondent 3. This document also contains similar averment i.e. "amt. paid towards loan amount against agreement." We have yet one more document i.e. a letter dated 12/2/2004 addressed to respondent 3 by the petitioner which also refers to the finance agreement. It is stated in this letter that "the amount of the payment of cheques will be adjusted from your finance agreement account". There is yet one more receipt dated 7/4/2004 which also contains a reference to the finance agreement. Therefore, prima

facie, it is obvious that there is a finance agreement. If indeed this finance agreement was fabricated, the petitioner ought to have immediately reported the matter to the police. The agreement is dated 19/1/2002. The petitioner has not approached the police but has filed the instant petition on 22/8/2005 i.e. nearly after three years, that too, when the Chandigarh police swung into action.

7. We may also note that in the letter dated 12/2/2004 which is sent by the petitioner to respondent 3, which has a reference to finance agreement there is also a reference to certain cheques. It is stated that "in view of present cheques issued to you, you will return the earlier cheques including cheque No.805433 and cheque No.805434 of I.O.B. (Indian Overseas Bank) Juhu, Bombay." There is no dispute that cheque No.805434, is the bounced cheque. We may refer to letter dated 18/6/2005 addressed by the Indian Overseas Bank to the petitioner which states as follows:

> "We are in receipt of your cheque bearing no.805434 dated 16.12.2004 for Rs.11000000/- fvg. Sandarshi Jaiswal in clearing which could not be honoured for insufficient funds. Moreover, the cheque was stale. Kindly advise us as the details/purpose of the transaction as you are maintaining a balance of Re.1/- and the

account is dormant.

Kindly call on us immediately with the unused cheque book for cancellation failing which we may be compelled to complain to the police."

8. We have on record another letter dated 28/6/2005 addressed to Indian Overseas Bank by the petitioner. The letter shows that it is received by the bank on 30/6/2005. The petitioner has indicated in this letter that they would like to close their account in the bank. If indeed, the petitioner's case is that the cheques were lost or misplaced, one would find mention of this fact in this letter. Another undated letter is annexed to the petition. This is addressed by the petitioner to the bank. It is stated therein that cheque No.805434 is lost. The bank seems to have received it on 30/6/2005. All this needs to be investigated.

9. We do not want to go into the merits of the allegations made by the petitioner and merits of respondent 3's case. The question is of jurisdiction of the Chandigarh police to investigate the case. Prima facie, we are of the opinion that the petitioner's case that at respondent 3's instance, the Chandigarh police forced, the petitioner to execute the finance agreement, at Chandigarh is not truthful. But, all the aspects need to be investigated into. If the finance agreement is

executed at Chandigarh, Chandigarh police cannot be stopped from investigating the case nor can the investigation be transferred to Mumbai police. The petition appears to us to be premature. We, however, make it clear that we have not expressed any final opinion on the merits of the case. The investigating agency should investigate the case uninfluenced by our observations. The petition is rejected.

10. Mr. Saraogi, the learned counsel for the petitioner requests that the interim order be continued for three weeks. Mr. Dave, objects. In the circumstances of the case, the interim order shall continue for three weeks only.

(SMT. RANJANA DESAI, J.)

(ANOOP V. MOHTA, J.)